

ORIGINAL

Decision No. 30114.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application of  
OAKLAND TERMINAL RAILROAD COMPANY  
to abandon a spur track.

Application No. 21306.

Brobeck, Phleger and Harrison, by J. S. Moore,  
for Applicant.

J. Kerwin Rooney, Deputy City Attorney,  
City of Oakland.

Decoto and St. Sure, by Ezra W. Decoto,  
for Tom Ferro and Associates.

H. A. Stout, for C. W. Hickman and Alhambra Water  
Company, Protestants.

BY THE COMMISSION:

O P I N I O N

In this application Oakland Terminal Railroad Company requests permission to abandon spur track located adjacent to Claremont Avenue, near Vicente Street, in the City of Oakland, Alameda County, California.

A public hearing was held in this matter before Examiner Hall, in Oakland on August 27, 1937.

The spur track herein involved is located on the Claremont Line of Key System. At approximately the point where the double track Claremont Line goes from private right-of-way into Claremont Avenue, said spur branches southerly from the eastbound track, and after leaving the railroad right of way continues southerly on the

private property owned by Tom Ferro and associates for a distance of about one hundred and eighty feet; all as shown on Exhibit No. 1 filed in this proceeding. The land which said track occupies is between the private right of way of Key System and Claremont Avenue, near Vicente Street. This spur track was constructed in accordance with an agreement entered into between San Francisco, Oakland and San Jose Consolidated Railways (predecessor in interest to Oakland Terminal Railroad Company) and Ergo A. Majors (predecessor in interest to Tom Ferro et al) on February 20, 1912. A copy of said agreement was entered in this proceeding as a portion of Exhibit No. 2.

The spur track involved herein is the only spur track located on the Claremont Line and in order to give service thereto, applicant must make special trips from its freight yard at Hollis Street or Yerba Buena Avenue, a distance of about two and one-half miles. The following table shows the number of loaded cars delivered to consignees at this spur track:

<u>Year</u>	<u>Number of Cars Delivered</u>
1934	70
1935	91
1936	125

Exhibit No. 3 shows in detail the revenues derived and the expenses incurred in connection with the deliveries of these cars for the year 1936. This record shows an out-of-pocket loss of \$217.26 for the year.

It was also shown that the track has been in need of repair for some time, to the extent that an embargo is in effect which will allow the spotting of only one car at any time.

Applicant contends that public convenience does not justify the continued maintenance of this spur track under these conditions.

None of the above-mentioned deliveries were made on account of Tom Ferro, et al, owners of the property, and they presented testimony to show that they have no need for the track and desire it removed in order to improve the property for other than industrial purposes. This improvement cannot at present be realized as the entire frontage of the property is shut off by the spur track.

The City Council of the City of Oakland, by Resolution No. 5660 C.M.S., copy of which is filed in this proceeding, authorized the City Attorney to consent to the granting of this application.

C. W. Hickman and Alhambra Water Company protest the granting of the application on the ground that the placing of cars on this spur is necessary for the conduct of their respective businesses. Hickman operates a coal yard on property adjacent to that occupied by the spur. Cars of coal and allied products are placed on the spur, the contents of which are either transported direct to his customers by truck or transferred from freight car to his yard by truck. Hickman contends that if this spur is removed he will be required to haul his products from a spur track about two miles distant, thus increasing his costs about 45 cents per ton of coal handled. During the last several years he has had delivered to this track about 29 cars per year.

Alhambra Water Company has a spring water plant located on Telegraph Avenue, several blocks from the spur. This spring water comes from Martinez, Contra Costa County, in tank cars which are placed on the Claremont spur for unloading and the company uses an underground pipe line extending from the spur to their plant to convey the water from the tank car to its plant. This pipe line in part occupies the right of way of Key System and in part the public street. The Water Company has an agreement with the

railroad relating to this pipe line easement, which specifies that upon notice from the railroad, the pipe line shall be removed in sixty days. The Water Company contends that if the spur track is removed, it will be necessary for it to move its plant to a location near some other rail track facilities.

The two above-mentioned concerns are the principal users of this spur, but occasionally other parties have cars placed thereon for unloading.

We thus are confronted with a situation where private spur track facilities are used not by the owner of the premises occupied, or by his lessees, but by persons who apparently do not possess the right to encroach upon those premises. The carrier having presented its petition for authority to abandon service to the spur, the question presented is whether the owner of the land may be compelled to accord the use of the track facilities to those with whom he has no contractual arrangement, and to maintain them in a proper condition for such use.

It is to be noted that Section 25 of the Public Utilities Act relates to the duty of a railroad corporation to provide connections with private spur track facilities constructed by a shipper or receiver of freight, its obligation being merely to provide the necessary connections and spurs which are to be located upon its own right of way. By Section 39(a) of this Act, the Commission is granted power to order railroad corporations to fulfill the duty imposed by Section 25. Section 39(a), however, also grants the Commission power to direct an order against the owner of a private spur track to compel him to accord to other shippers or contemplated shippers of freight the right to connect with and use his private track facilities. A joint use of private track facilities may not be ordered unless it is found that such use will not constitute an unreasonable interference with the rights of the shipper originally incurring the cost of construction.

We are of the opinion that the application to abandon should be granted. It is evident that the carrier's service to this spur track is not conducted at a profit, and although the protestants expressed their willingness to pay higher switching charges, the evidence indicates that the continued use of the spur in its present condition would constitute a burden upon the applicant from which it should be relieved. Moreover, we are of the opinion that we are without power to compel the owner of the land occupied by the spur to retain it for the use of the general public.

O R D E R

IT IS HEREBY ORDERED that Oakland Terminal Railroad Company is authorized to abandon and remove its spur track (sometimes known as Claremont Spur), located near the intersection of Claremont Avenue and Vicente Street, City of Oakland, County of Alameda, California, at the location as shown by map (Exhibit No. 1) filed in this proceeding, subject to the following conditions:

- (1) Applicant shall give not less than thirty (30) days' notice to the public of said spur track abandonment by posting notice at said spur track.
- (2) Applicant shall, within thirty (30) days thereafter, notify this Commission, in writing, of the abandonment of the spur track authorized herein and of its compliance with the condition hereof.
- (3) The authorization herein granted shall lapse and become void if not exercised within one (1) year from the date hereof, unless further time is granted by subsequent order.

The effective date of this Order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 13<sup>th</sup> day of September, 1937.

William H. Hays  
John G. Riley  
Paul H. Hays  
Wm. H. Hays  
John G. Riley  
Commissioners